

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4271 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRAKUMAR MAGANLAL

Versus

COLLECTOR

Appearance:

MR YM THAKKAR for Petitioners

MR HH PATEL, ld.AGP for Respondents Nos.1 to 4

MR SHANTILAL S SHAH for Respondent No. 5

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 18/08/2000

ORAL JUDGEMENT

The grievance of the petitioners is that though they were permitted to construct shops by the Municipality, the Collector had initiated action by issuing the impugned notice dated 19-6-1991 at Annexure "C" to the petition, to the Municipality, directing status quo to be maintained in respect of the shops in question.

It appears from the impugned notice issued by the Collector to the Municipality that it related to the shops, which were under construction. The Collector wanted to ascertain whether the shops were constructed on the land belonging to the Municipality or not. According to the petitioners, the full amount was deposited against the construction and the respondent no.5 Municipality had permitted them to construct the shops at the ground floor level by its order dated 1.6.1991. This fact has not been controverted by filing reply.

Even if the Collector initiated action against the Municipality under Section 258 of the Gujarat Municipality Act, 1963, it was incumbent upon him to hear the persons who were interested in the shops by virtue of their having obtained permission from the Municipality for the purpose of such construction. In the case of H.H. Parmar Vs Collector, Rajkot and Another reported in 20 (2) GLR 97, a Division Bench, in the context of the provisions of Section 258 of the said Act has held that the Collector before taking any action, which may affect the rights of the persons interested, was required to give such persons a reasonable opportunity of being heard.

It is, therefore, directed that no action will be taken by the Collector, pursuant to the impugned notice without hearing the petitioners in respect of the shops in question. Rule is made absolute accordingly, with no order as to costs.

18-8-2000 (R.K.Abichandani, J.)

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